IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

FRIDAY, THE TWENTY THIRD DAY OF JULY
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE SRI DEVINDER GUPTA,THE CHIEF JUSTICE

and
THE HON'BLE MR JUSTICE C.V.RAMULU

WRIT APPEAL NO : 1047 of 2004

(Writ Appeal under Clause 15 of the Letters Patent against the Order dated 9.1.2004 in W.P. No :1910 of 1994 on the file of the High Court.)

Between:

Somavaram Lingamaiah, S/o. Veeraiah,

Aged about 62 years, Occ: Agriculture,

R/o. Hakimpet, Hyderabad.

..... APPELLANT

AND

1 Government of A.P. rep by its District Collector, Hyderabad District, Hyderabad
2 The Revenue Divisional Officer, Hyderabad Division, Hyderabad.
3 The Mandal Revenue Officer, Golconda Mandal at Vijayanagar Colony, Hyderabad.
4 Hyderabad Urban Development Authority, rep by its Secretary, Paigah Palace, Police Lines, Begumpet, Hyderabad.

.....RESPONDENT(S)

Counsel for the Appellant:MR.K.LAXMAIAH

Counsel for the Respondent Nos.1 to 3: G.P. for Revenue

Counsel for the Respondent No.4: Mr. T. Ananta Babu, Senior Advocate for Mr. B. Viswanath Reddy

The Court made the following Oral Order: (per Sri Devinder Gupta, CJ)

Appellant has questioned the legality and validity of the order passed by the learned single judge dismissing his writ petition by the impugned order dated 19.1.2004.

Appellant has filed the Writ Petition questioning the legality and validity of Notice dated 2.9.1993 issued by the Mandal Revenue Officer, Golconda with a prayer to set aside the said notice and drop all the proceedings for his eviction from the land measuring Ac.1.20 guntas being part of Survey No.102/1 of Hakeempet Village.

Appellant has alleged that he was the owner and in occupation of Ac.4.16 guntas of land situated in No.102/1 of Hakeempet Village, Golconda Mandal. He also states that there is a temple in the said land and his predecessors had been rendering services to the temple and were performing pujas. Smt. Sadamma, Jogan of the appellant's family had filed an application to the then Tahsildar and Collector of His Excellency Nizam of Hyderabad for grant of patta for Ac.4.16 guntas which was in her occupation. It is stated that after considering her application and on verification of the contents and after making enquiries, her case was recommended for being granted the said land and orders were issued in the year 1945 granting the said land to Sadamma and ever since she became the owner, and since the appellant-petitioner being successor, is in possession and enjoyment of the said land.

Appellant thereafter alleged that in June, 1982 notice under Section 7 of A.P. Land

Encroachment Act III/1905 was issued to him stating that he was in illegal occupation of 2.00 acres of land situated in Survey No. 102/1. Appellant claimed to have submitted his reply to the notice, but, no further action was taken. But, abruptly, after 11 years, a fresh notice under Section 7 of the said Act was again issued on 2.9.1993 by the Mandal Revenue Officer, Golconda stating that the appellant was in illegal occupation of Ac.1.20 guntas of land in Survey No.102/1. Appellant alleges that though he submitted reply to the said notice, the Mandal Revenue Officer, Golconda without going through the reply filed by him has threatened to evict him from the land in question. Hence, he filed Writ Petition No.1910 of 1994 before this Court and along with the said petition, he also filed an application for interim relief. By order dated 10.2.1994, status-quo as regards possession was granted to the appellant.

The writ petition was opposed by the respondents denying appellant's claim that he is the absolute owner and possessor of the land in question and that he had perfected his title by way of adverse possession. It was stated that subsequent to the issue of show cause notice dated 2.9.1993, the appellant has not submitted his explanation. Therefore, final order under Section 6 of the Act was passed for his summary eviction. The appellant refused to received the same and hence he was evicted from the land in question pursuant to the show cause notice. It was further contended that when once the appellant was dispossessed from the Government land by following the procedure prescribed by law, the land absolutely vested in the Government and it was always open to the Government to make use of the said land according to its requirements and therefore the learned single judge was justified in dismissing the appellant's writ petition and the same does not require any interference.

Learned counsel for the appellant submits that when once the proceedings were initiated under the first notice, it was not permissible for the respondents to issue

notice again under Section 7 of the Land Encroachment Act for evicting him. He further submits that since the appellant was in occupation as successor of the original grantee, it was not open for the respondents to initiate proceedings seeking to evict him from the land in question. The remedy, if any, available for the respondents was to take recourse to a Civil Court.

The appeal was taken up by us for consideration and at the behest of the appellant, we had called upon the respondents to produce the file as regards the proceedings taken under the first show cause notice, but, the records were not produced by them. However, respondents 4 as well as respondent No.1 have filed affidavits in reply alleging about the fraud played by the appellant to grab the Government land. It is stated that after the writ petition was dismissed by the learned single judge on 9.1.2004, the General Power of Attorney holder of appellant handed over a copy of the order purported to have been passed on 12.2.2004 by a learned single judge of this Court in W.P. No. 2351 of 2004. On such copy being produced, the Camp Clerk of the Collectorate has verified the order and entertained some suspicion about the genuineness of the said order. On 20.2.2004, through internet, it was found that Writ Petition No.2351 of 2004 relates to a service matter filed by the Financial Advisor and Chief Accounts Officer and it has nothing to do with the lis in question. The Camp Clerk having noticed that the cause title of the said writ petition was not tallying with the cause title in the copy of the order produced by the G.P.A. Holder in Writ Petition No. 2351/2004, brought these facts to the notice of the Joint Collector to make an endorsement to that effect and thereafter put up the file for the perusal of the Collector, Hyderabad District. It was further noticed that on 23.2.2004, the appellant as well as two other persons mentioned in the copy of the order purported to have been passed in writ Petition No.2351 of 2004, had lodged a caveat in the Collectorate. The Collector, in fact, on 21.2.2004 itself had addressed a letter to the Commissioner of Police, Hyderabad directing him to conduct enquiry into the matter and to take necessary action against the writ petitioner, who is the appellant in this

appeal and two others for submitting fake order in Writ Petition No.2351/2004. That apart, the District Collector is also stated to have lodged a complaint before the Station House Officer, Habeebnagar on 1.3.2004, which was registered as Crime No. 54 of 2004. It is alleged that the appellant and two others even tried to get the regularization done with respect to the land measuring Ac.4.16 guntas situated in Hakeempet Village on the basis of the said fake orders.

Be that as it may, in so far as the criminal proceedings are concerned, they will take their own course. But, having heard the learned counsel for the appellant, we do not find any force in the submission of the learned counsel. During the course of arguments, it was submitted by the learned counsel for the appellant, that it was not permissible for the respondents to issue the second show cause notice, when the first notice itself was still pending. It is not disputed that the first show cause notice was issued in the year 1982. He has also drawn our attention to the affidavits in reply filed by the respondents wherein it was stated that though the first show cause notice was issued in the year 1982, the proceedings could not be concluded by the respondents due to the missing of the file. He submits that when once action proposed could not be initiated for which purpose it was intended, nothing prevented the respondents from continuing the same proceedings for eviction of the appellant. He, therefore submits that the appellant ought to have been afforded an opportunity of hearing and even as per the stand of the respondents, no reply to second show cause notice was filed, which led to the passing of the final order of eviction.

We are not satisfied with the submission made by the learned counsel for the appellant since no material has been brought to our notice by the appellant claiming any right or title to the land in question. As per the averments made in the affidavit filed in support of the writ petition, the appellant has asserted that he is in possession of the land in question. This fact has been denied by the respondents in the affidavits in reply and asserted that the appellant had been dispossessed, and

the land has been handed over to HUDA. The learned single judge noticing the stand of the Government that the writ petitioner was already dispossessed from the land in question, and the land was allotted to HUDA dismissed the Writ Petition. However, the material placed on record would depict that there exists a disputed question as to whether the appellant has been dispossessed or not.

It is well settled that in such like disputed questions of fact, a Writ Court cannot exercise its jurisdiction under Article 226 of the Constitution of India. We may further like to mention here that in the affidavit in reply filed by HUDA in this appeal, it is asserted that the appellant had also filed O.S. No.1690/98 on the file of the Court of the IX Junior Civil Judge, City Civil Court, Hyderabad seeking permanent injunction restraining the Respondent(HUDA) from interfering with his possession. It is needless to add that if such a suit is filed and is pending, it is always open for the parties to prosecute the same.

In the circumstances, we feel that there is hardly any ground to interfere with the order under appeal. The appeal is accordingly dismissed. No costs.

DEVINDER GUPTA,CJ

DATE: 23rd JULY, 2004

C.V. RAMULU,J

pnb

To

1. The District Collector, Government of A.P., Hyderabad District, Hyderabad

2. The Revenue Divisional Officer, Hyderabad Division, Hyderabad.

3. The Mandal Revenue Officer, Golconda Mandal at Vijayanagar Colony, Hyderabad.

4 . The Secretary, Hyderabad Urban Development Authority, Paigah Palace, Police Lines, Begumpet, Hyderabad.

5. Two C.cs. to the Government Pleader for Revenue, High Court Buildings, Hyderabad. (OUT)

6. Two C.D. copies